

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

THERESA DOWD,

Plaintiff,

v

Case No. 19-13611

Honorable Thomas L. Ludington

Magistrate Judge Patricia T. Morris

UNITED STATES OF AMERICA,

Defendant.

**ORDER ADOPTING REPORT AND RECOMMENDATION AND DISMISSING
COMPLAINT**

On or about November 13, 2019, Plaintiff Theresa Dowd filed a complaint in the 80th Judicial District for the State of Michigan against Paul Borninski, an employee of the United States Postal Service. ECF No. 1. Because the United States Postal Service is an agency of the United States of America, the case was removed to this Court. *Id.* On December 17, 2019, the complaint was referred to Magistrate Judge Morris. ECF No. 2. On December 18, 2019, Judge Morris entered an order substituting the United States for Defendant Borninski because Borninski “was acting within the scope of his employment as Clare County Postmaster at the time of the incident giving rise to the suit.” ECF No. 4 at PageID.17. The United States was substituted as Defendant pursuant to the Federal Employees Liability Reform and Tort Compensation Act of 1988.

On December 20, 2019, Defendant filed a motion to dismiss. ECF No. 5. Judge Morris subsequently entered a report recommending that Defendant’s motion be granted, and Plaintiff’s complaint dismissed. ECF No. 10. She concluded that Plaintiff did not exhaust her administrative remedies as required by the Federal Tort Claims Act and the United States had not waived its sovereign immunity.

Although Judge Morris's report explicitly stated that the parties to this action may object to and seek review of the recommendation within fourteen days of service of the report, neither Plaintiff nor Defendant filed any objections. The election not to file objections to the Magistrate Judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation, ECF No. 10, is **ADOPTED**.

It is further **ORDERED** that Defendant's motion to dismiss, ECF No. 5, is **GRANTED**.

It is further **ORDERED** that Plaintiff's complaint is **DISMISSED**.

Dated: May 15, 2020

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney of record herein by electronic means and to **Theresa Dowd**, PO Box 211, Mount Pleasant, MI 48804 by first class U.S. mail on May 15, 2020.

s/Kelly Winslow
KELLY WINSLOW, Case Manager